IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7042 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNAMBEN @ PUNIBEN RAMANBHAI SHANABHAI VAGHRI @ TALPADA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms. Manisha Lavkumar, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel for the petitioner and learned AGP Ms. Manisha Lavkumar for the respondents nos.1, 2 and 3.

The detention order dated 28-8-1999 passed by the respondent no.2-District Magistrate, Kheda against the petitioner in exercise of powers conferred under Section 3(i) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that fifteen Prohibition cases are registered at Dakor Police Station, in between 11-1-1997 to 25-4-1999. That in each case countrymade liquor has been seized from the possession of the petitioner. That all these cases are pending for trial.

2.1 Over and above that four witnesses on assurance of their anonymity have given statements on 5-8-1999, 6-8-1999, 7-8-1999 and 8-8-1999 respectively wherein incidents alleged to have occurred on 1-8-1999, 5-8-1999, 5-8-1999 and 2-8-1999 respectively are stated.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended at the Bar on behalf of the petitioner that as per paragraph 8 of the petition, the petitioner is not supplied with the vital documents like bail application and order passed thereon in the matter of CR no.5231/98. It is submitted that on account of non supply of such vital document, the petitioner could not make effective representation against her detention and as such constitutional mandate under Article 22(5) is violated which has rendered the continued detention illegal, and hence, the impugned order is required to be quashed and set aside.

5. It is pertinent to note that despite due service of rule, none of the respondents has filed affidavit-in-reply to controvert the averments made in the petition. On behalf of the respondents, it has been submitted that in view of the proposition laid down by the Supreme Court in the matter of KANUJI S. ZALA VS.STATE OF GUJARAT AND ORS., (AIR 1999 SC 2269), the petitioner cannot claim to quash and set aside the order.

It is difficult to accept the submission made on behalf of the respondents, particularly, in view of the fact that said decision is based on the proposition that credible and cogent material was placed before the detaining authority while passing the detention order and in consideration of said material, detention order was passed, while in the instant case, scrutiny of the grounds of detention itself suggests that no list of documents is incorporated in the grounds of detention which are supplied to the detenu alongwith the grounds of detention. When the petitioner has raised a specific contention vide paragraph 8, the respondent ought to have refuted the allegation or explained the same. Under the circumstances, I am constrained to give a finding of fact that on account of non supply of vital documents, the petitioner is deprived of an opportunity to make effective representation against his detention which amounts to violation of constitutional mandate under Article 22(5), and as such, the continued detention of the detenu being illegal, the impugned order is required to be quashed and set aside.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 28-8-1999 passed by the respondent no.2 against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Punamben alias Puniben Ramanbhai Shanabhai Vagri alias Talpada is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)
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